

Tribal Comment Letters



SOUTHERN UTE INDIAN TRIBAL COUNCIL

POST OFFICE BOX 737
IGNACIO, COLORADO 81137
970-563-0100
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Howard D. Richards, Sr., CHAIRMAN
Pearl E. Casius, VICE-CHAIRPERSON
Vida B. Peabody, COUNCIL MEMBER/TREASURER
Melvin J. Baker, COUNCIL MEMBER
Joycelyn Datchie, COUNCIL MEMBER
Clement J. Frost, COUNCIL MEMBER
Jimmy R. Newton, Jr., COUNCIL MEMBER

March 2, 2004

Steven L. Spangle, Field Supervisor
Arizona Ecological Services Field Office
U.S. Fish and Wildlife Service
2321 W. Royal Palm Road, Ste. 103
Phoenix, Arizona 85021-4951

Re: Comments on Anticipated Proposal to Designate Critical Habitat for the Southwestern Willow Flycatcher

Dear Mr. Spangle:

I am writing to communicate the Southern Ute Indian Tribe's comments regarding the anticipated designation of critical habitat for the endangered southwestern willow flycatcher (*Empidonax trailii extimus*). This letter is in response to the Service's request for comments or suggestions contained in the Service's "notice of intent" that was published in the *Federal Register* on Wednesday, January 21, 2004 (69 Fed. Reg. 2940-43 (2004)). In summary, the Tribe is concerned about the current lack of a scientific basis for the designation of Southern Ute Tribal lands as critical habitat for the flycatcher and the potential adverse impact that a designation of Southern Ute Tribal lands as critical habitat for the flycatcher could have on the Tribe's exercise of its sovereign decision-making authority and use and development of our natural resources.

CH 41

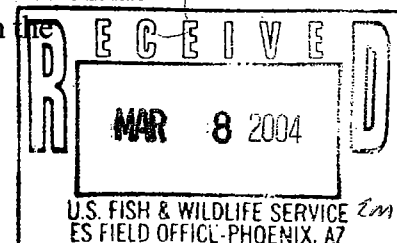
LO 7

PR 42

Our principal concern is that the sub-species of flycatcher that occurs on the Southern Ute Indian Reservation appears *not* to be the endangered *extimus* subspecies. As you are aware, the Tribe coordinated with Dr. James Sedgwick from the U.S. Geological Survey in 2003 for the conduct of sonogram studies of several breeding flycatcher pairs in the Los Piños River valley. Based on the results of Dr. Sedgwick's work, which we believe is the best available scientific data on breeding flycatchers in this area, the flycatchers occurring on the

CH 41

LO 7



Mr. Steven L. Spangle

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March 2, 2004

Southern Ute Indian Reservation are the common *adastus* subspecies. This suggests that the range boundary of *extimus*, and the areas which should receive consideration for critical habitat designation, lie outside the exterior boundaries of the Southern Ute Indian Reservation. The Tribe recognizes, however, that the Service will rely upon genetic evidence, when it becomes available, to make its final subspecies determination. In that regard, the Tribe looks forward to working cooperatively with the Service in conducting the necessary genetic studies. However, in the absence of any verification that the flycatchers occurring on the Reservation are, in fact, the endangered *extimus* subspecies, we believe the designation of Southern Ute Tribal lands as critical habitat would be unsupportable.

CH 41

Our second concern is that although our sonogram data suggests that pure *adastus* breeders occur on the Southern Ute Indian Reservation, we recognize the potential that southwestern Colorado may serve as a zone of hybridization between *adastus* and *extimus*. If the Service determines through flycatcher genetic studies that inter-mixing of the subspecies occurs here, we would have serious doubts concerning the importance of this area to the expansion and recovery of *extimus*. We suggest that the recovery of *extimus* would not be well served by designating critical habitat within a zone of hybridization, if in fact one exists.

CH 42

Our third concern relates to the Service's trust responsibility to the Tribe. Aside from biological reasons for objecting to the designation of Southern Ute Tribal lands as critical habitat for the flycatcher, we believe that the Service has a trust obligation, as is recognized in the Service's Native American Policy (1994), Secretarial Order 3206 (1997), and Executive Order 13175 (2000), to work cooperatively with the Tribe, on a government-to-government basis in developing a suitable alternative to designation of Southern Ute Tribal lands as critical habitat. The Tribe and Service share a common goal in protecting important habitats for wildlife, including the flycatcher, and I am confident that goal can be achieved without the infringement on tribal decision-making authority that would be associated with a designation of Southern Ute Tribal lands as critical habitat. The Tribe employs a staff of professional wildlife managers, and we have adopted a comprehensive natural resource management plan to guide our land use and ensure the protection of sensitive natural resources. If the Service believes that Southern Ute Tribal lands constitute a critical portion of the *extimus* range, then the Tribe is willing to work cooperatively with the Service to develop a plan which meets the conservation needs of the flycatcher in a manner that is acceptable to both the Service and the Tribe.

PR 47

PR 25

Mr. Steven L. Spangle

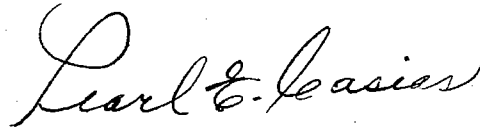
Page 3

March 2, 2004

In conclusion, thank you for the opportunity to provide comments on this subject. We hope that you will consider our concerns in a positive light and that you will consult with the Tribe in a manner that allows for meaningful and timely input by the Tribe before designating any Southern Ute Tribal lands as critical habitat for the flycatcher. If you have questions or would like to discuss the Southern Ute Indian Tribe's position on this subject, please contact Mr. Steve Whiteman, Division Head with the Tribe's Wildlife Resource Management Division, at (970) 563-0130.

PR 17

Sincerely,



Pearl Casias, Vice-Chairman
Southern Ute Indian Tribal Council

cc: Tribal Council
Steve Whiteman
Maynes, Bradford, Shipps & Sheftel, LLP

memorandum

DATE: FEB 12 2004

REPLY TO
ATTN OF: Regional Director, Pacific Regional Office

SUBJECT: Bureau of Indian Affairs Comments on U.S. Fish and Wildlife Services Intent to Prepare an Environmental Assessment for Anticipated Proposal of Critical Habitat for the Southwestern Willow Flycatcher

TO: Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office

Critical habitat designation for the southwest willow flycatcher could potentially impact numerous Indian Tribes, and thousands of acres of Tribal trust lands. Tribal trust lands are considered to be those specific geographical areas upon which are found the physical and biological features essential to the survival and betterment of Native American peoples. During the Nineteenth Century, reservations and rancherias were set aside for California tribes in a manner analogous to the critical habitat designations the U.S. Fish and Wildlife Service now commonly create for T&E species. These tribal lands were set aside to sustain tribes' cultural, religious and social ways of life, and to provide the means and resources to maintain a standard of living comparable to non-Indian peoples. The reservations were established to ensure the survival and recovery of Indians recognized by the Federal Government as discreet and unique indigenous groups in need of assistance and protection. PR 43

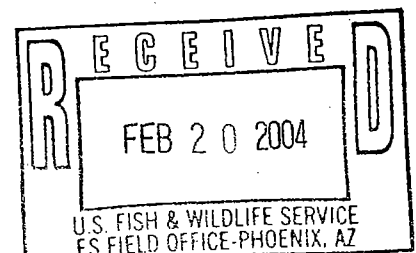
Over the course of the history of the United States there have been many changes in the policies and procedures for dealing with Native American issues. The most recent guidance, relative to this issue, for Department of Interior employees, was an Executive Order titled "Consultation and Coordination with Indian Tribal Governments", released November 6, 2000. Without going into great detail, I will briefly quote some of the guidance this Executive Order places on Department of Interior Employees: PR 17

"As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The U.S. continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights."

"The U.S. recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination."

"With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible." PR 159

"When undertaking to formulate and implement policies that have tribal implications, agencies shall: encourage Indian tribes to develop their own policies to achieve program objectives; where possible, defer to Indian tribes to establish standards; and, in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes."



"To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless: funds necessary to pay the direct costs incurred by the Indian tribal government in complying with the regulation are provided by the Federal Government, or the agency, prior to the formal promulgation of the regulation, consulted with tribal officials early in the process of developing the proposed regulation; and in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and makes available to the Director of OMB any written communications submitted to the agency by tribal officials."

PR 160

"On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking."

"Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes."

As a "sister", Department of Interior agency, the Bureau of Indian Affairs would challenge the U.S. Fish and Wildlife Service to apply the guidance found in the Executive Order in the anticipated designation of critical habitat for the endangered southwestern willow flycatcher. The Bureau of Indian Affairs believes this Executive Order would require the Fish and Wildlife Service to only designate critical habitat on Indian land in the most dire circumstances, and then only after every attempt had been made to work with the effected Tribe to develop alternatives, such as a Tribal Management Plan.

PR 47

Unlike many comments and complaints the Fish and Wildlife Service receives, the Bureau of Indian Affairs would like to offer its assistance in applying the guidance found in this Executive Order. The Bureau of Indian Affairs, Pacific Regional Office has records of tribal locations and contact information for tribal chairpersons and tribal representatives. We would offer to assist the Fish and Wildlife Service identify all tribes within the Pacific Region that might be impacted by this listing and initiate government-to-government discussions as outlined in the Executive Order.

If you need any further assistance, please contact David Wooten, Regional Endangered Species Coordinator, at (916) 978-6078, or Rick Fielitz, Regional Forester, at (916) 978-6061.



Attachment: November 6, 2000, Executive Order, Consultation and Coordination with Indian Tribal Governments

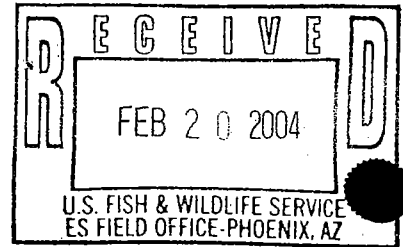
Printed by Susan P. Jones



Scott Aikin
11/08/2000 02:28
PM

To: FW1 All Region 1 Employees

cc:
Subject: Consultation & Coordination with Indian Tribal Governments



The following is a new Executive Order released Wednesday, November 6, 2000 on Consultation and Coordination with Indian Tribal Governments. This Executive Order will be effective 60 days from the release date and will subsequently revoke the previous Executive Order, 13084, entitled Consultation and Coordination with Indian Tribal Governments dated May 14, 1998. This new order is a renewal of the current Administration's commitment to tribes and a reaffirmation of the government to government relationship process. I have included the Bureau of Indian Affairs web site that gives more detail about the signing and specifics of the order at the bottom of this page. **This order applies to the Service so please take a moment to review.**

Thank You,
Scott L. Aikin
Native American Affairs Liaison, Region 1 USFWS
(503)231-6123

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

November 6, 2000

STATEMENT BY THE PRESIDENT

Today I am pleased to sign a revised Executive Order on consultation with Indian tribal governments. This Executive Order, itself based on consultation, will renew my Administration's commitment to tribal sovereignty and our government-to-government relationship.

The First Americans hold a unique place in our history. Long before others came to our shores, the First Americans had established self-governing societies. Among their societies, democracy flourished long before the founding of our Nation. Our Nation entered into treaties with Indian nations, which acknowledged their right to self-government and protected their lands. The Constitution affirms the United States' government-to-government relationship with Indian tribes both in the Commerce Clause, which establishes that 'the Congress shall have the Power To . . . regulate commerce . . . with the Indian Tribes,' and in the Supremacy Clause, which ratifies the Indian treaties that the United States entered into prior to 1787.

Indian nations and tribes ceded lands, water and mineral rights in exchange for peace, security, health care and education. The Federal Government did not always live up to its end of the bargain. That was wrong, and I have worked hard to change that by recognizing the importance of tribal sovereignty and government-to-government relations. When I became the first president since James Monroe to invite the leaders of every tribe to the White House in April 1994, I vowed to honor and respect tribal sovereignty. At that historic meeting, I issued a memorandum directing all federal agencies to consult with Indian tribes before making decisions on

matters affecting American Indian and Alaska Native peoples.

Today, there is nothing more important in federal-tribal relations than fostering true government-to-government relations to empower American Indians and Alaska Natives to improve their own lives, the lives of their children, and the generations to come. We must continue to engage in a partnership, so that the First Americans can reach their full potential. So, in our Nation's relations with Indian tribes, our first principle must be to respect the right of American Indians and Alaska Natives to self-determination. We must respect Native Americans rights to choose for themselves their own way of life on their own lands according to their time honored cultures and traditions. We must also acknowledge that American Indians and Alaska Natives must have access to new technology and commerce to promote economic opportunity in their homelands.

Today, I reaffirm our commitment to tribal sovereignty, self-determination, and self-government by issuing this revised Executive Order on Consultation and Coordination with Indian Tribal Governments. This Executive Order builds on prior actions and strengthens our government-to-government relationship with Indian tribes. It will ensure that all Executive departments and agencies consult with Indian tribes and respect tribal sovereignty as they develop policy on issues that impact Indian communities.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

November 6, 2000

EXECUTIVE ORDER

CONSULTATION AND COORDINATION
WITH INDIAN TRIBAL GOVERNMENTS

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes, it is hereby ordered as follows:

Section 1. Definitions. For purposes of this order:

(a) "Policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

(b) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1974, 25 U.S.C. 479a.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be

independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) "Tribal officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Sec. 2. Fundamental Principles. In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. Policymaking Criteria. In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) encourage Indian tribes to develop their own policies to achieve program objectives;

(2) where possible, defer to Indian tribes to establish standards; and

(3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sec. 4. Special Requirements for Legislative Proposals. Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

Sec. 5. Consultation. (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall

designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with tribal officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with tribal officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Sec. b. Increasing Flexibility for Indian Tribal Waivers.

(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.



Tohono O'odham Nation
Natural Resources Department
WILDLIFE AND VEGETATION MANAGEMENT PROGRAM

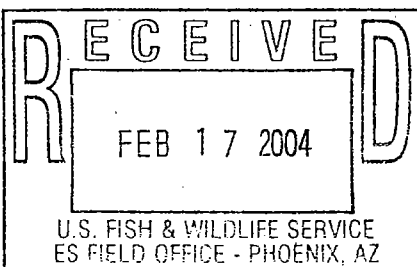
Memorandum

To: Peter Ruiz, Director, Natural Resources Department
From: Selso Villegas, Ecologist SW
Date: 02/06/2004
Re: Proposed Critical Habitat for the Southwestern Willow Flycatcher

On January 30, 2004, I spoke with Jeffrey Humphrey, Public Outreach Specialist for the US Fish and Wildlife Service (FWS), in the Arizona Endangered Species Office, in Phoenix. There are no records of the Southwestern willow flycatcher (*Empidonax trailii extimus*) for the Nation. The closest observation records are on the Buenos Aires National Wildlife Refuge, east of the Nation. Mr. Humphrey indicated that the designation of critical habitat for the Southwestern willow flycatcher would not apply to the Nation. Mr. Humphrey also stated that the FWS would continue to notify the Nation about issues involving endangered and threatened species off the Nation.

LO24

PR 45



R6T-009

Cahuilla Tribal Environmental Office

P.O. Box 391741 Anza, CA 92539

Ph: (909) 763-2631 Fax: (909) 763-2632

March 1, 2004

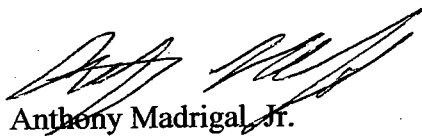
Re: Southwestern Willow Flycatcher

Dear Steven L. Spangle,

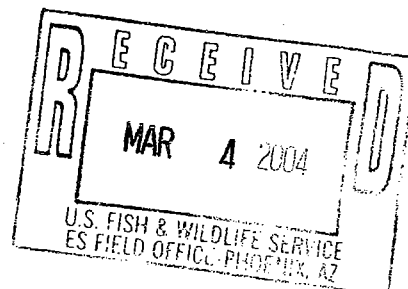
The Cahuilla Band of Indians is not aware of this particular species on the reservation. We would like to consult with you on this issue. The tribe does not desire to have any land deemed critical habitat designation. This type of designation may affect us economically, as well as traditionally. It would also be in the best interest of the tribe to work closely with United States Fish and Wildlife to figure out what can be done about this particular species.

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14064
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PR47

Sincerely,



Anthony Madrigal, Jr.
Environmental Coordinator



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Soboba Band of Luiseño Indians

P.O. BOX 487 • SAN JACINTO, CA 92581 • TELEPHONE (909) 654-2765

February 6, 2004

Field Supervisor
Arizona Ecological Services Office
2321 West Royal Palm Road
Suite 103
Phoenix, AZ 85021

Re: Southwestern willow flycatcher
critical habitat designation

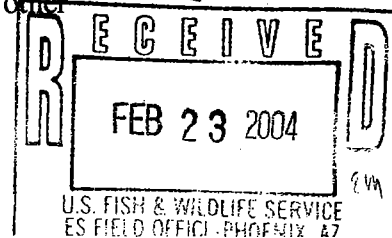
Field Supervisor,

In response to the U.S. Fish and Wildlife Service announcement seeking public participation in identifying issues in the anticipated designation of critical habitat for the endangered southwestern willow flycatcher, the Soboba Band of Luiseño Indians, a Federally recognized Indian Tribe, submits these comments.

1. First and foremost, Tribal lands should not be designated as critical habitat. While it has been well-established that Indian tribes in the United States are sovereign nations, the U.S. is legally required to act as caretaker for Indian interests, including the protection of the health, welfare, and land resources of Indian people. In other words, Indian land and resources are held "in trust" by the U.S. Government, a policy known as the government's trust responsibility. In managing trust lands or assisting tribes to do so the Government must act for the exclusive benefit of tribes, and ensure that Indian reservations are protected and used for the purposes for which they are intended: to provide for the physical, economic, social, and spiritual well-being of tribes. Reservations were not set aside as parks, critical habitat for endangered species, or even, for that matter, for protection of wildlife, except, as this will directly benefit the tribe for which the reservation was created. Tribal lands do harbor some of the most wild and scenic places on the continent and Tribal lands in many cases harbor far greater biological diversity than the surrounding public or private land. Nevertheless, reservation lands are primarily home to the people who live and work there and were created for the safe haven, ecological, social, and economic benefit of the Indian people.¹

The designation of critical habitat on Indian lands also presents an unjust economic burden on the Tribe. Most Tribal activities will have a Federal nexus because they are associated with Bureau of Indian Affairs oversight or funding. This will require that the Tribe obtain permits or enter into consultation for most of their developmental ventures, thus increasing both costs and time for completion of projects.

2. The Tribe asks that all other possibilities are evaluated first. "Secretarial Order 3206, through its appendix, affirmatively prioritizes tribal interests over those of other



landowners or managers: Critical habitat shall not be designated in such areas (that affect trust resources, tribally owned fee lands or the exercise of tribal rights) unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands."² Therefore, the Tribe would like to reserve its right to final comments until after the Secretarial requirements of evaluation and documentation of alternatives "limiting the designation to other lands" as well as any affirmative determination that designation of Soboba tribal lands is "essential to conserve a listed species" have been provided in writing to the Tribe for its review.

PR47

PR46

3. The Soboba Tribe asks that the U.S. Fish & Wildlife Service consult with the Tribe on a government-to-government basis. The Presidential Memorandum of April 29, 1994 and Executive Order No. 13084 of May 14, 1998 set forth that when a federal agency is making a decision that will impact a tribe it must ensure that tribal rights and concerns are taken into consideration. The tribes are not to be treated on the same basis as other stakeholders. Tribes are sovereign nations and are to be consulted with on a government-to-government basis. For issues requiring formal consultation please send a letter to the Tribal Chairman, and CC the Environmental Department and the Tribal Administrator. The Environmental Department will then work with the contacting agency to gather information for the Tribe. After gathering information, the Environmental Program Director will present the information to the Soboba Tribal Council. After the information has been reviewed the Soboba Tribal Council will take the appropriate action.

PR47

Therefore, the Tribe's desire is that first and foremost no portion of the Soboba Indian Reservation be designated as critical habitat, based on the government's trust responsibility in ensuring that reservations are protected and used for the exclusive benefit of the Tribe. If it is possible that designation of any part of the Soboba Reservation might be found essential to conserve the species, then Soboba requests to be consulted on a government -to-government basis.

PR46

PR47

Sincerely,

Rosemary Morillo
Rosemary Morillo
Vice Chairman

References

1. Tribal Working Group of the Southwestern Willow Flycatcher Recovery Team Southwestern Willow Flycatcher Recovery Plan, "Tribal Perspectives on Southwestern Willow Flycatcher Management and the Endangered Species Act", Draft of April 2001.
2. Sandi Zellmer, University of Toledo College of Law, "Conserving Ecosystems through the Secretarial Order on Tribal Rights, 1998".

P25



TRIBAL PLANNING, BUILDING & ENGINEERING

February 4, 2004

Steven Spangle, Acting Regional Director
U.S. Dept. of the Interior – Fish and Wildlife Service
2321 West Royal Palm Road, Suite 103
Phoenix, AR 85021-4951

Re: Notification of Intent to Prepare an Environmental Assessment for Anticipated Proposal of Critical Habitat for the Southwestern Willow Flycatcher

Mr. Steven Spangle,

While we appreciate your notice regarding the future revision of the critical habitat designation of the southwestern willow flycatcher (*Empidonax traillii extimus*), the Agua Caliente Reservation, located in Palm Springs, CA lies outside this area. In addition, because the southwestern willow flycatcher breeds in patchy to dense riparian habitats, most of the Reservation riparian habitat is unsuitable. Only 8 acres (3 ha) of Sonoran Cottonwood-Willow Riparian Forest, 223 acres (90 ha) Southern Sycamore-Alder Riparian Woodland, and 452 acres (183 ha) of desert fan palm oasis forest exist on the Reservation. In addition, most of the riparian habitat occurs along steep walled and heavily bouldered canyons, at the bottom of very narrow canyons, making the physical and hydrological conditions unsuitable for dense riparian shrub and tree vegetation used by breeding flycatchers. Surveys conducted on the Reservation by the University of California Riverside (2002, 2003) failed to confirm any southwestern willow flycatchers.

LO12

LO31

Regardless, the Tribe has established an Indian Canyons Park to protect the resources found within the canyons. Furthermore, a Tribal Habitat Conservation Plan is in place that will protect a minimum of 90 % of all riparian habitat. Monitoring of endangered obligate riparian species will continue, including the southwestern willow flycatcher, and appropriate conservation efforts will be enforced.

PR26

Very truly yours,

Kim Kindt, MS
Tribal Biologist
**AGUA CALIENTE BAND OF
CAHUILLA INDIANS**

KSK

C: Tom Davis, Chief Planning Officer

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